



RICHARD M. PARR
General Attorney and
Assistant General Counsel
Legal Department

RECEIVED
SEP 26 2005

CITY ATTORNEY'S OFFICE
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www.sbc.com

September 19, 2005

Paul M. Valle-Riestra
Senior Assistant City Attorney
City of Walnut Creek
P. O. Box 8039
1666 North Main Street
Walnut Creek, CA 94596

Re: Your Letter of September 12, 2005

Dear Paul:

Thank you for your letter of September 12, 2005. Delays we are experiencing in your permitting process have caused us to reevaluate plans to proceed with Project Lightspeed in Walnut Creek. We will advise the City of our position. In the interim, we do not believe any constructive purpose will be served by presenting a MOU for discussion.

We appreciate the withdrawal of the condition on the encroachment permit for out of service work on our customer's POTS line. It is our understanding, however, the City has not, and will not, withdraw the illegal conditions placed on the encroachment permit now the subject of our objections and pending administrative appeal. We are proceeding with our administrative appeal and will pursue our remedies with regard to that permit.

As I believe you are aware, we engaged Ron Van Buskirk (415-983-1496) of Pillsbury Winthrop Shaw Pittman, LLP to represent SBC California in this administrative appeal. Ron is working with his colleagues Chris Ball (415-983-7231) and Diana Graves (415-983-1764). I request that you work with them in scheduling the appeal for hearing and consideration by the City Council.

Your courtesies are appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Parr", is written over a horizontal line.



From: Paul Valle-Riestra
To: *PARR, RICHARD M (Legal)*
Date: 10/17/05 5:37PM
Subject: Walnut Creek Franchise Agreement

Richard,

While you decided not to provide the proposed "MOU" that SBC put together, I still would like to see if we can work out some type of agreement relating to the provision of video programming. As we discussed previously, I understand SBC's concern about having to enter into long franchise negotiations resulting in different complex agreements. With that concern in mind, I have drafted the attached proposed agreement which is only two pages. If this is acceptable to SBC, I'm prepared to recommend to the City Council that they promptly approve this agreement. Please let me know if this is agreeable to SBC. Thank you.

Paul M. Valle-Riestra
Senior Assistant City Attorney
City of Walnut Creek
1666 N. Main St.
P.O. Box 8039
Walnut Creek, CA 94596
voice: (925) 943-5813
FAX: (925) 256-3501
e-mail: valle-riestra@walnut-creek.org

CC: Ball, Christopher R.

CABLE FRANCHISE AGREEMENT

This Agreement is entered into this October __, 2005, by and between SBC Communications, Inc., SBC California (collectively "SBC") and the City of Walnut Creek ("City").

1. Grant of Franchise. SBC is currently constructing lines and facilities to provide, among other things, video programming as part of "Project Lightspeed" which the parties acknowledge constitutes a "Cable System" as that term is used in federal, state and local law. Subject to the terms and conditions of this Agreement and the Cable Ordinance, the City hereby grants SBC a nonexclusive franchise to construct, operate and maintain a Cable System within the public rights-of-way within the City for the purpose of providing Cable Service.

2. Area Served. SBC shall construct the Cable System to pass every dwelling unit within the City and shall extend cable service to any residence upon request unless the City grants an exemption from this requirement in writing. The initial construction of the entire Cable System shall be completed no later than two years after the effective date of this Agreement.

3. Term. The term of this franchise shall be for fifteen years from the date of this Agreement, unless the franchise is earlier revoked.

4. Compliance with Laws. SBC agrees to comply with all applicable federal, state and local laws, regulations, standards and codes as they may be amended from time to time.

5. Emergency Notification System. In addition to complying with federal requirements for an emergency alert system, the Cable System shall be designed and constructed to permit the City to simultaneously override audio and video signals and broadcast emergency messages on all channels on the Cable System. The City shall be given the capability to initiate emergency messages from City Hall, or such other place as the City may designate. SBC shall assist the City in periodic testing of the emergency notification system.

6. Public, Educational and Governmental ("PEG") Access Channels. Upon initial activation of the Cable System, SBC shall dedicate five (5) channels (the "PEG Channels") for the exclusive use of the City or its designees in its sole discretion for public, educational or governmental access purposes. Upon initial activation of the Cable System, SBC shall provide dedicated, bidirectional fiber optic links between SBC's headend or other insertion point and City Hall for the City's exclusive use. SBC shall also provide all equipment and services necessary to transport video programming over these fibers and shall place these PEG access channel signals onto its cable system. SBC shall place these channels on the Basic Service Tier in channel positions that are

contiguous with, and not separated by other channel numbers from, the other channels located on the Basic Cable Service tier. Each PEG access channels shall be delivered to *subscribers with signal quality at least as good as the NTSC standard and at least as good as every other channel provided on the cable system using the same converters and signal equipment that is used for other Basic Service Tier channels.* SBC shall not change the channel assignment for the PEG Access Channels without the prior written approval of the City, unless required by federal law.

7. PEG Access Capital Payments. In addition to any other payment made to the City, SBC shall pay the City a PEG Access Capital Payment in the initial amount of \$160,000 within eighteen months of the effective date of this Agreement, with subsequent additional payments in the amount of three percent (3%) of its Gross Revenues. The PEG Access Capital Payment shall be paid quarterly at the same time and using the same calculations and rules as the calculation and payment of Franchise Fees. PEG Access Capital Payments may be used for PEG Access and Institutional Network capital purposes at the sole discretion of the City.

8. Institutional Network ("I-Net"). SBC shall, concurrent with construction of the remainder of the Cable System, construct and dedicate to the City for public agency and non-profit use an I-Net consisting of six (6) optical fibers. The I-Net shall be a bidirectional, fully fiber-optic network designed and constructed with single mode fiber, in a design so that each I-Net site can originate and receive fully interactive video, data and voice signals upon initial activation of the Cable System. The I-Net should include all equipment acceptable to the City necessary to provide the foregoing functionality. The I-Net fibers shall be terminated at each building specified by the City, not to exceed 27 sites. SBC shall maintain the fiber according to highest standard provided for any of its customers. All costs of construction, operation, equipment and maintenance shall be fully borne by SBC. Upon completion of construction, SBC shall test the I-Net, make any necessary corrections and provide the test results to the City.

9. Miscellaneous. Time is of the essence in the performance of this Agreement. The City reserves all rights and powers not specifically granted by this Agreement. This Agreement is the entire Agreement between the parties. This Agreement shall be governed by the laws of the State of California. Any action to enforce or interpret this Agreement may only be brought in Superior Court of California, County of Contra Costs, or in the event of a "federal question", in District Court for the Northern District of Ca.

SBC

City of Walnut Creek

By: _____

By: _____



From: Paul Valle-Riestra
To: internet:rp3639@sbc.com
Date: 10/21/05 12:03PM
Subject: Walnut Creek/Project Lightspeed

Richard,

In light of some of the discussion on Tuesday night, attached is a revised proposed agreement. Per that discussion, I have revised the agreement so that it isn't called a franchise and doesn't define SBC's service as cable. The agreement continues to provide for an I-Net, but if that's an objectionable requirement, I'm willing to agree on the value of the I-Net and substitute equivalent additional funding for PEG access for the I-Net, thereby maintaining something of a level playing field. You also mentioned that it effectively incorporates our 47 page ordinance. I'm not sure where you got the figure of 47 pages - perhaps that's how it prints out electronically from our website, but it's only 21 pages as it appears in the bound version of our Municipal Code. In any event, I also added a provision to the draft agreement exempting SBC from certain sections of the ordinance, which brings the total down to 16 pages. And even those pages include several pages of right-of-way regulations that I don't think there is any dispute over, and customer service standards which essentially just reflect the FCC standards.

Again, the City would love to see SBC offer its new video product in Walnut Creek. It doesn't seem like we're that far apart on the issues. Please let me know what you think of the attached.

Paul

Paul M. Valle-Riestra
Senior Assistant City Attorney
City of Walnut Creek
1666 N. Main St.
P.O. Box 8039
Walnut Creek, CA 94596
voice: (925) 943-5813
FAX: (925) 256-3501
e-mail: valle-riestra@walnut-creek.org

CC: internet:sw1685@sbc.com

AGREEMENT

This Agreement is entered into this October __, 2005, by and between SBC Communications, Inc., SBC California (collectively "SBC") and the City of Walnut Creek ("City").

1. Grant of Franchise. SBC is currently constructing lines and facilities to provide, among other things, video programming as part of "Project Lightspeed". City believes that this provision of video programming constitutes "Video service" as that term is used in federal, state and local law; SBC believes that this provision of video programming does not constitute "Video service." Accordingly, the provision of video programming service and other programming services by SBC together with all subscriber interaction related to such services, regardless of how delivered, shall be referred to herein as "Video Service". All facilities used in full or in part in any way for Video Service shall be referred to herein as the "Video System". All provisions of federal, state and local law that apply to "cable operators", "cable service" and "cable systems" shall apply to SBC and its Video Service and Video System as if they were a cable operator, cable service and a cable system, without any admission by SBC that this is the case. Subject to the terms and conditions of this Agreement and the Cable Ordinance, the City hereby grants SBC the nonexclusive authority to construct, operate and maintain a Video System within the public rights-of-way within the City for the purpose of providing Video Service.

2. Area Served. SBC shall construct the Video System to pass every dwelling unit within the City and shall extend Video service to any residence upon request unless the City grants an exemption from this requirement in writing. The initial construction of the entire Video System shall be completed no later than two years after the effective date of this Agreement.

3. Term. The term of this franchise shall be for fifteen years from the date of this Agreement, unless the franchise is earlier revoked.

4. Compliance with Laws. SBC agrees to comply with all applicable federal, state and local laws, regulations, standards and codes as they may be amended from time to time. Notwithstanding the foregoing, for the purpose of this Agreement, sections 6-7.21 and 6-7.26 shall not apply to SBC.

5. Emergency Notification System. In addition to complying with federal requirements for an emergency alert system, the Video System shall be designed and constructed to permit the City to simultaneously override audio and video signals and broadcast emergency messages on all channels on the Video System. The City shall be given the capability to initiate emergency messages from City Hall, or such other place as the City may designate. SBC shall assist the City in periodic testing of the emergency notification system.

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7. PEG Access Capital Payments. In addition to any other payment made to the City, SBC shall pay the City a PEG Access Capital Payment in the initial amount of \$160,000 within eighteen months of the effective date of this Agreement, with subsequent additional payments in the amount of three percent (3%) of its Gross Revenues. The PEG Access Capital Payment shall be paid quarterly at the same time and using the same calculations and rules as the calculation and payment of Franchise Fees. PEG Access Capital Payments may be used for PEG Access and Institutional Network capital purposes at the sole discretion of the City.

8. Institutional Network ("I-Net"). SBC shall, concurrent with construction of the remainder of the Video System, construct and dedicate to the City for public agency and non-profit use an I-Net consisting of six (6) optical fibers. The I-Net shall be a bidirectional, fully fiber-optic network designed and constructed with single mode fiber, in a design so that each I-Net site can originate and receive fully interactive video, data and voice signals upon initial activation of the Video System. The I-Net should include all equipment acceptable to the City necessary to provide the foregoing functionality. The I-Net fibers shall be terminated at each building specified by the City, not to exceed 27 sites. SBC shall maintain the fiber according to highest standard provided for any of its customers. All costs of construction, operation, equipment and maintenance shall be fully borne by SBC. Upon completion of construction, SBC shall test the I-Net, make any necessary corrections and provide the test results to the City.

9. Miscellaneous. Time is of the essence in the performance of this Agreement. The City reserves all rights and powers not specifically granted by this Agreement. This Agreement is the entire Agreement between the parties. This Agreement shall be governed by the laws of the State of California. Any action to enforce or interpret this Agreement may only be brought in Superior Court of California, County of Contra Costa, or in the event of a "federal question", in District Court for the Northern District of Ca.

SBC

By: _____

City of Walnut Creek

By: _____



RECEIVED
OCT 31 2005



CITY ATTORNEY'S OFFICE
WALNUT CREEK, CALIFORNIA

RICHARD M. PARR
General Attorney and
Assistant General Counsel
Legal Department

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October 26, 2005

Paul M. Valle-Riestra
Senior Assistant City Attorney
City of Walnut Creek
P. O. Box 8039
1666 N. Main Street
Walnut Creek, CA 94596

Re: Proposed Terms on which SBC California Will Proceed with Project
Lightspeed in Walnut Creek

Dear Paul:

SBC California is pleased to document the commitments made in the City Council meeting on October 18th. SBC believes these commitments satisfy the City's telecommunications policy. SBC hopes these commitments address the City's concerns and will allow the City to withdraw the conditions on the permits, so the citizens of Walnut Creek can realize the benefits of the next generation of telecommunications services that we plan to offer. SBC would like to avoid further disputes over the illegal barriers imposed by the conditions on the permits. We hope the City will reconsider and reverse the denial of the appeal of Encroachment Permit Condition, Permit No. EP-05-0434 in accordance with the terms set forth below.

To avoid interrupting or stopping Lightspeed construction in Walnut Creek and the consequent unavailability of our advanced communications, internet access, data, video, and interactive services to your residents; and, to avoid the inconvenience, expense and uncertainty of litigation over the legality of the permit condition in question and SBC California's rights under state and federal law to deploy Project Lightspeed-related facilities and offer the above described next generation services over our telephone lines, we will entertain the following compromise and settlement.

In exchange for, and in consideration of the commitments by the City of Walnut Creek, California ("the City") herein, SBC California will agree, for a term of three years, as follows:

1. To contribute to the City a fee of up to 5% of the gross sales collected *from each subscriber to SBC's IP video services product, as that product is defined by SBC upon offering it to the public, delivered to residents of the City over SBC network facilities located within the City's rights of way,* such fee to be identified on subscribers bills.
2. SBC California will provide some form of access to the City's noncommercial, public, education and government (PEG) programming through its IP-enabled video service. To meet this term, it is understood by the City it may be required to support a transition, change or addition to current City technology now in use to carry programming compatible with our IP enabled video technology.
3. SBC California will rebroadcast some form of emergency message which is part of any programming obtained through its IP enabled video service and will cooperate with City to enable appropriate messages to be transmitted in the event City declares an emergency.
4. To otherwise operate, consistent with California Public Utilities Code Section 7901, in accordance with the normal, routine and customary course of business as provided by the City's applicable municipal ordinances, including those processes in place for obtaining approval for placement of facilities consistent with the City's applicable zoning, building and electrical codes, and architectural review, without regard to whether such operations may be related to Project Lightspeed or the provision of IP video services.
5. To release, forbear from and covenant not to initiate further legal, equitable or administrative proceedings in pursuit of its rights, remedies and claims in connection with denial of its appeal of the encroachment permit condition, Permit No. EP-05-0434, and any other permits made subject to the condition at issue and covered by this agreement.

In exchange for, and in consideration of, the commitments by SBC California stated in this letter, the City will agree as follows:

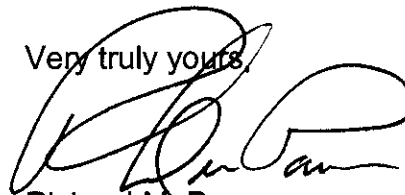
1. On appropriate motion at the next regularly scheduled meeting of the City Counsel or as soon as practicable, the City Council will reconsider its denial of the appeal of the encroachment permit condition, Permit No. EP-05-0434, withdraw the resolution denying the appeal, and take such action as may be necessary and appropriate to authorize the responsible staff to set aside the condition.

2. Consistent with Section 7901 of the California Public Utilities Code, the City shall cease and desist from imposing the condition¹ in question on *encroachment permits issued to SBC California by the City of Walnut Creek*, and shall set aside any such condition, that has created a barrier to entry, that may have been attached to encroachment permits issued to date not the immediate subject of this administrative appeal.
3. SBC may apply for, and the City shall process applications for and issue encroachment permits in the normal, routine and customary course of business as provided by the applicable municipal ordinances, without regard to whether work made the subject of such permits is related to Project Lightspeed. No new, additional or special conditions, limitations or exceptions shall be imposed by the City based upon the identification of any work, project or facility to be related to Project Lightspeed. The City shall not act or omit to act in any manner to delay, impede or prevent SBC California from undertaking maintenance, construction, repairs or refurbishment of its network facilities in Walnut Creek, or provisioning, marketing and sales of services transported over its network solely on the basis that IP video services may be, or are, among the services transported over the network.

As we have discussed several times, our IP video product remains in an evolving and developmental stage. Precise details on the means by which we will accomplish PEG access and emergency notification must remain subject to further development of our product and the facilities by which it will be delivered. Our agreement will also be subject to intervening federal and state law.

Please advise me at your earliest convenience whether the City is willing to move forward on the basis proposed in this letter. I would also appreciate it if you will advise me should the City decline this proposal. I am happy to discuss final documentation of these terms with you.

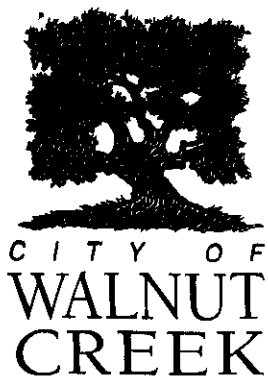
Very truly yours,



Richard M. Parr
General Attorney and
Assistant General Counsel

¹ The City has imposed a condition that requires SBC California to, in effect, waive its legal rights on the central issue of whether its proposed video offering is or is not a cable offering: "By accepting this permit, SBC agrees on behalf of itself and its affiliates that it will not provide video programming (including but not limited to video programming delivered using internet protocol) over its facilities located with(in) *sic* the City's rights-of-way to subscribers within the City without first obtaining a cable franchise or an open video system franchise from the City."





November 3, 2005

Richard M. Parr
Assistant General Counsel
Legal Department
SBC West
2600 Camino Ramon
Room 2W954
San Ramon, CA 94583

Re: Project Lightspeed

Dear Richard:

Thank you for your letter dated October 26, 2005. I believe that your proposal represents a good starting point for an agreement and that we should be able to quickly reach resolution. Accordingly, we would like to move forward with discussions. Of course, the City Council will not be able to consider the matter, nor will we be able to withdraw the condition at issue, until we have an agreement that has been negotiated at the staff level. We would propose that the term of the agreement be longer than 3 years, but that issue is negotiable. Other terms would need to be more detailed and complete than the wording you have proposed, but again I believe we are close enough that we should be able to reach an agreement quickly.

I'm completely open concerning the format of the agreement. I have previously provided SBC with several possible formats. If one of them looks like a good starting point to you, I'd suggest that you mark it up as quickly as possible and send it back to me. Alternatively, feel free to draft something new. I look forward to working with you to reach agreement in an expeditious manner.

Very truly yours,

Paul M. Valle-Riestra
Senior Assistant City Attorney



RICHARD M. PARR
General Attorney and
Assistant General Counsel
Legal Department

SBC West
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San Ramon, California 94583

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November 10, 2005

Paul M. Valle-Riestra
Senior Assistant City Attorney
City of Walnut Creek
P. O. Box 8039
1666 North Main Street
Walnut Creek, CA 94596

RECEIVED
NOV 14 2005
CITY ATTORNEY'S OFFICE
WALNUT CREEK, CALIFORNIA

Re: Proposed Consent Agreement

Dear Paul:

Thank you for your letter of November 4, 2005.

We appreciate your invitation to discuss how we might resolve our differences. We understand your stated position that in the interim, the City and City Council will not act to reconsider our appeal and set aside the permit condition with respect to the permit immediately in question, or any other permits that may have issued in the past or which may be issued in the future for work involving Project Lightspeed. We will need to factor that into our assessment of current options, though our clear preference is to reach a compromise agreement that will allow us to bring an exciting new video choice to residents of Walnut Creek.

In response to your request, I attach a proposed Consent Agreement. We are prepared to commit to the terms set forth in the attached agreement immediately but are open to further discussions that may lead to an amicable resolution of our dispute. We believe a 3-year term offers the best opportunity for us to reach a compromise settlement agreement in view of our differences of opinion and the likelihood that additional clarity may be provided on these issues in the coming months.

After you have an opportunity to review the proposed Consent Agreement, please let me know if it is acceptable and, if not, what path you would propose for us to search for the common ground that we believe is in both of our interests.

Very truly yours,

Attachment

AGREEMENT

THIS AGREEMENT ("Agreement") dated _____, 2005 ("Effective Date") is made by and between Pacific Bell Telephone Company, a California corporation doing business as SBC California ("SBC California") and City of Walnut Creek, a municipal corporation ("City"). SBC California and City shall sometimes be referred to separately as a "Party," and collectively as the "Parties."

RECITALS

A. As a telephone corporation, SBC California has a statewide franchise under Public Utilities Code § 7901 ("Section 7901") to construct, operate and maintain its telecommunications facilities in the public rights of way ("ROW") throughout the state of California without having to obtain a local franchise or pay franchise fees.

B. SBC California is in the process of upgrading its existing telecommunications network to provide an integrated Internet Protocol ("IP") enabled broadband platform of voice, data and video services ("IP Network"), the video component of which is a switched, two-way, point-to-point and interactive service ("IP-enabled Video Service"). The IP Network upgrade will involve the use of the City's ROW.

C. SBC California believes that Section 7901 covers the construction, operation and maintenance of the IP Network, and that SBC California is not required to obtain a franchise or other authorization from the City to offer IP-enabled services including IP-enabled Video Services within the City limits over the IP Network.

D. SBC California further believes that City's right to regulate the construction of the IP Network in City's ROW is limited to time, place, and manner considerations.

E. City believes that the provision of IP-enabled Video Services by SBC California is beyond the scope of Section 7901 and is subject to City's local franchising authority.

F. Both Parties agree that the deployment of the IP Network and the provision of IP-enabled Video Services should not be delayed by litigation to establish the scope of Section 7901 or the application of the City's franchise ordinance to IP-enabled Video Services.

G. City and SBC California further agree that litigation to resolve this issue would be complex and protracted, and that it is in the best interests of both Parties and the residents of City to reach a compromise of each other's positions and claims.

DRAFT FOR DISCUSSION PURPOSES ONLY

NOW, THEREFORE, in consideration of and reliance upon the respective representations, promises, concessions, terms and conditions contained herein, City and SBC California agree as follows.

1. Term. The term of this Agreement shall be from the Effective Date of this Agreement through the end of 2008. The term may be extended upon mutual agreement of the Parties.

2. Compensation to City. During the term of this Agreement, SBC California shall remit to City a fee not to exceed 5% of the gross revenues from subscription fees collected from each subscriber to SBC California's IP-enabled Video Services product delivered over the IP-enabled communications network in the City's rights of way; such product to be defined by SBC California when it is offered to the public. The fee does not apply to non-video revenues or the non-video revenues of a bundled product containing IP video and non-video offerings. The fee will be identified and passed through on any subscriber bill by SBC California, and all such fees collected will be forwarded to City quarterly on the last day of each quarter after collection.

3. Public, Educational and Governmental Programming. SBC California will carry City's noncommercial, public, education and government (PEG) programming made available and delivered by City to SBC California in a format consistent with SBC California's IP-enabled communications network.

4. Emergency Message. SBC California will retransmit emergency alerts on its IP-enabled Video Services consistent with federal standards and in the event the City declares a public safety emergency.

5. Customer Service. SBC California will comply with customer service requirements consistent with 47 C. F. R. Section 76.309(c) until there are two or more providers offering video services, excluding direct-to-home satellite service in the City.

6. Obligations of City. During the term of this Agreement City will not attempt to nor subject the provision of SBC California's IP-enabled Video Services over the IP Network to regulation under its cable television franchise ordinance or similar ordinance. In addition:

(a) City agrees to subject the construction and installation of the IP Network to the same process and review as it subjects the installation and construction of SBC California's existing telecommunications infrastructure.

(b) City agrees not to block, restrict, or limit the construction and installation of the IP Network.

(c) City agrees to process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with the IP Network in a timely and prompt manner.

7. Indemnification.

(a) SBC California agrees to indemnify, defend, and hold harmless City, its officers, agents, and employees, from and against any liability for damages and for any liability or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by SBC California's negligent construction, operation, or maintenance of its IP Network, provided that City shall give SBC California written notice of its obligation to indemnify City within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, SBC California shall not indemnify City for any damages, liability or claims resulting from the negligence or willful misconduct of City, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any person or entity other than SBC California in connection with PEG programming.

(b) With respect to SBC California's indemnity obligations set forth above, SBC California shall provide the defense of any claims brought against City by selecting counsel of SBC California's choice to defend the claim, subject to the consent of City, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent City from cooperating with SBC California and participating in the defense of any litigation by its own counsel at its own cost and expense, provided, however, that after consultation with City, SBC California shall have the right to defend, settle or compromise any claim or action arising hereunder, and SBC California shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such settlement do not include the release of City and City does not consent to the terms of any such settlement or compromise, SBC California shall not settle the claim or action, but its obligation to indemnify City shall in no event exceed the amount of such settlement.

(c) City shall hold SBC California harmless and shall be responsible for damages, liability or claims resulting from the negligence or willful misconduct of City.

(d) City shall be responsible for its own acts of negligence or willful misconduct, or breaches of obligation committed by City for which City is legally responsible, subject to any and all defenses and limitations of liability provided by law. SBC California shall not be required to indemnify City for acts of City which constitute willful misconduct or negligence on the part of City, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

8. Breach of Agreement. Should either party claim that a breach of any part of this Agreement has occurred, that party will provide prompt written notice to the other, specifying the nature of the breach; and upon receipt the other party shall cure such breach within 60 days.

9. Dispute Resolution. Except as otherwise provided in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in

DRAFT FOR DISCUSSION PURPOSES ONLY

the administration of this Agreement through discussions between designated representatives of the Parties, and use of a mediator when such discussions have failed

10. Notices. Any notice to be given under this Agreement shall be in writing and may be delivered to either personally, by facsimile or by certified or registered mail with postage prepaid and return receipt requested, addressed as follows:

If to City: City of _____

Attn:

If to SBC California: SBC California

Attn:

11. Modification. This Agreement may be amended or modified only by a written instrument executed by both Parties.

12. Assignment. SBC California may assign or transfer this Agreement or any interest therein, to any affiliate of SBC California without the prior consent of City.

13. Entire Agreement. This Agreement constitutes the entire agreement between City and SBC California with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between City and SBC regarding the subject matter hereof.

14. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

15. Miscellaneous.

(a) SBC California and City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

(b) The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

DRAFT FOR DISCUSSION PURPOSES ONLY

(c) SBC California and City shall cooperate fully with one another in the execution of any and all other documents and in the completion of any additional actions including, without limitation, the processing of permits that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

(d) Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.

16. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective past and present principals, managers, City Council members, offices, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

17. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of _____ ("Effective date").

SBC CALIFORNIA

By: _____
Name: _____
Title: _____

CITY

By: _____
Name: _____
Title: _____



From: Paul Valle-Riestra
To: internet:rp3639@sbc.com
Date: 12/2/05 4:30PM
Subject: SBC/Walnut Creek Agreement

Richard,

I didn't get chosen for a jury, so I did get some time to review your draft agreement. I've made some proposed changes - please see the red-lined version attached. Everything in the attached is negotiable. Please let me know what you think.

Paul

Paul M. Valle-Riestra
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